

REMARKS

The previous Office Action altered an original election of species and then made it final. The final election of species is believed to be between:

I. Figs. 1A-B; 2, 3 A-C; 6A-B; 7A-B; 8 A-F; 9 A-B; 19 A-E; 20 A-C; 21 A-B; 22 A-E; 23 A-B; 24-27 A-C, said to correspond to claims 1-22, 24-56 and 71-78.

II. Figs 10 A-B; 11 A-C, said to correspond to claims 57-60.

III. Figs 4A-B; 5A-B; 12 A-B; 13A-B; 14 A-D and 15 A-D, said to correspond to claims 61-62.

IV. Figs 14 E-H said to correspond to claims 63-65.

V. Figs 16 A-B; 17 A-E and 18 said to correspond to claims 66-70.

The most recent Office Action refused to withdraw the election of species requirement. Applicants reserve all of its rights relative to the election of species, including all rights of appeal, petition and extension.

Applicants' election is with traverse as the Office Action did not give deference to the written opinion of the PCT phase of this case. The Office Action reasoned "all of the claims could be searched in a PCT, as long as applicant pays the required fees." Applicants point is that it was never given a chance to pay such fees in response to an election of species. Deference was not given to the PCT phase in this case. No election of species was required in the PCT Written Opinion. Applicants respectfully submit that the election of species requirement should at the very least be changed to a restriction requirement to be consistent with the treatment of the claims in the PCT Written Opinion.

Applicants respectfully submit that at least one independent generic claim does exist in this case. Applicants note that a search of a reasonable number of species is warranted in such a case.

The Office Action withdrew all previous rejections of claims 63 and 65. The Office Action took the position that claims 63 and 65 were obvious over Pietrzak et al. (U.S. Pat. No. 5,527,342) in view of Sohn (WO/97/47246). Applicants respectfully disagree.

Pietrzak discloses a suture anchor 10. The suture anchor 10 is used to attach soft tissues and tendons to bone. Notably, the suture anchor 10 is driven into bone and remains in the bone permanently. A suture strand 50 is used to tie tissue.

In contrast, Sohn discloses a needle 20 for inserting a suture thread 22 through bone. Unlike the suture anchor 10 of Pietrzak which remains in the body permanently, the needle 20 in Sohn is not permanently left in the body. Thus, Pietrzak and Sohn disclose different surgical procedures and instrumentation. As a result, one of ordinary skill in the art would not look to Sohn to modify the teachings of Pietrzak.

Applicants respectfully request withdrawal of the rejection of claims 63 and 65 based on Pietrzak in view of Sohn.

A Supplemental Information Disclosure Statement is being sent concurrently herewith. Applicants respectfully request that the Supplemental Information Disclosure Statement be considered and acknowledged in the next Official Action.

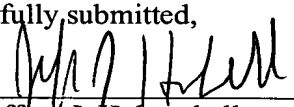
No fee is believed due for the submission of this amendment. Please charge the fee for the submission of the Supplemental Information Disclosure Statement to Deposit Account No. 501921. No other fee is believed due for the submission of these papers. If this is in error, applicants respectfully request and petition that any fee required for the timely submission of this response be charged to Deposit Account No. 501921.

If the Examiner believes a teleconference would be useful or helpful in progressing prosecution of this case, the Examiner is invited to telephone the undersigned attorney at 952-930-6135.

Registration Number 34,109	Telephone Number 952 930-6135
Date May 6, 2004	

Respectfully submitted,

By


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